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Judgment-Action Upon-Application of Statute of Limitations

JUDGMENT—ACTION UPON—APPLICATION OF STATUTE OF LIMITATIONS—On June 25, 1914, appellee recovered three separate judgments in the Lake Circuit Court against appellant. No execution was issued on any of these

judgments, nor was any proceeding had to collect them until May 15, 1928, when appellee filed this action in Lake Superior Court, on a complaint in three paragraphs on the three separate judgments rendered in the Lake Circuit Court, June 25, 1914. Burns' Ann. St. 1926, par. 302, provides that actions . . . on judgments of courts of record, must be brought within 20 years after the cause of action has accrued; and par. 659 provides that "all final judgments in the supreme and circuit courts for the recovery of money or costs shall be a lien upon real estate and chattels real liable to execution in the county where judgment is rendered for the space of 10 years after the rendition thereof, and no longer—etc." Appellant contends that since no execution was issued on said judgments and no attempt had been made to collect same, and no suit had been instituted on said judgments within 10 years after their rendition, said judgments were "dead." *Held:* Judgment affirmed. Action may be had on judgment after ten years and before twenty years have expired, and lien of new judgment runs for 10 years. *Town of New Chicago v. First State Bank of Hobart*, Appellate Court of Indiana, Dec. 6, 1929, 169 N. E. 56.

The two sections of the statute above set out must be construed together, and, when so construed, mean that execution may be had on a judgment at any time within 10 years after rendition thereof, but after 10 years and before the expiration of 20 years, another action may be had on the original judgment and a new judgment may be rendered, the lien of which begins at the date of the new judgment and runs for 10 years. The lien commences in Indiana with the rendition of the judgment and it has been held that indexing or docketing is not an essential condition precedent to the attaching of said lien, which, by weight of authority attaches upon real property acquired by defendant after rendition of judgment; *Campbell v. Martin*, 87 Ind. 577; although such lien does not usually relate back to the rendition of judgment. *Barth v. Makeever*, 4 Bliss. (U. S.) 206; *Chandler v. Cromwell*, 101 Miss. 161, 57 South. 554; *Lessert v. Sieberling*, 59 Neb. 309, 80 N. W. 900. It was held in *Gould v. Hayden*, 63 Ind. 443, that a judgment is a debt of record upon which an action may be maintained either in the court which rendered such judgment or in any other court of competent jurisdiction even though the judgment plaintiff could have enforced the collection of his judgment by an execution issued out of the court in which said judgment was rendered. Many jurisdictions, however, will allow no action upon a judgment until after expiration of the time in which execution may issue to enforce same. *Lee v. Giles*, 1 Bail (S. C.) 449; *McDonald v. Ayres*, (Tex.) 242 S. W. 192. But even under this latter and stricter view, it is clear that the action in the principal case was proper since the time in which execution might issue had expired. The grounds given for refusing to allow the judgment plaintiff a second action while he has every remedy for the enforcement of his first judgment which he could employ to compel the satisfaction of the second, are that such would permit defendant to be vexed and harrassed without conferring corresponding benefit on the plaintiff. This is a valid objection, but it has been generally overruled and the rule laid down in the principal case—that no steps to revive the lien of the judgment or to enforce the payment thereof, is a condition precedent to maintaining an action thereon—is the majority rule. Freeman on Judgments, 5th Ed.,

par. 1061. It is clear that under the statutes as interpreted, the judgment plaintiff may renew his action *ad infinitum* upon each successive judgment thus recovered, provided the action is brought anytime within the 20 year period of limitation, since any other construction would nullify the statutes. The statute of limitations begins to run upon a judgment only when it is final and enforceable by action, which is normally when it becomes effective by rendition and entry; *Sweetser v. Fox*, 43 Utah 40, Ann. Cas. 1916C 620; (and other cases there cited) and in the absence of a statute, if an action is begun within the statutory period, a new judgment obtained thereon would be effective and actionable for another period of equal length. In some states, even after the 20 year period has run, the judgment may be revived by a part payment or new promise, since contracts may be revived in this manner, and such states hold that judgments are contracts. The case of *Niblack v. Goodman*, 67 Ind. 174, holds with the weight of authority that a judgment is not a contract (authorities pro and con cited in 8 L. R. A. [N. S.] 444) although *Odell v. Green*, 122 N. E. 791, 72 Ind. App. 65, holds that in no event does a statute of limitations utterly destroy a judgment, and if the limitation be not pleaded it is waived, whereupon the judgment which is the foundation of the action, although over 20 years old, will sustain a new judgment, while if the limitation is pleaded and the action thereby barred, yet the old judgment will be a sufficient consideration for a new promise The latter case is in conflict with section 86, subsection 1, of the American Law Institute's restatement of the law of Contracts, and is clearly unsupported by the weight of authority. K. J. M.